IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 69 OF 1996

Shri. Shaukat Abdul Pansare
Age about - 35 years,
Occupation -Fitter, R/at
Pansare Wada, House No.199,
Near Vitthal Mandir, Daund,
Tal. Daund, Dist. Pune. .. Appellant / [Orig. Accused]

Versus

The State of Maharashtra.
[Through Daund Police Station] .. Respondent / [Complainants]

Mr. C.R. Sonawane and G.B. Nagarkar for the Appellant /Accused.

Mr. B.H. Mehta, Addl. Public Prosecutor for the State.

CORAM : S.K. SHAH, J.

DATED : 21.12.2004.

ORAL JUDGMENT :

1. The appellant has filed this appeal against the order passed by the learned Additional Sessions Judge, Baramati in Sessions Case No. 75 of 1991 convicting

him of the offence punishable under section 498A of the Indian Penal Code and sentencing him to suffer R.I. for two years and to pay fine of Rs.50/- in default to suffer R.I. for one month, while passing an order of acquittal of offences punishable under section 302 of the Indian Penal Code.

2. The Appellant / Accused is resident of Daund. The complainant Shaikh Makbul [PW3] and his wife Shabira [PW5] are resident of Yeravada, Dist. Pune. Deceased Najnin was their daughter. She got married with accused about 1-1/2 months prior to the incident which took place on 25.3.1991.

3. The case of the prosecution is that after marriage the accused behaved property with the deceased for about 2 to 3 months. Thereafter, however, accused started ill-treating the deceased by beating her, keeping her starving and restraining her from going out of the house. It is also alleged that the accused used to consume liquor. It is alleged that the deceased used to complain to her parents about this ill-treatment. The parents were on the visiting terms with the accused. It is further alleged that 1-1/2 months prior to the incident when the parents had gone to the house of the accused, that time also the deceased made similar complaint of ill-treatment to

them. It is further alleged by the prosecution that at that time the complainant Shaikh Makbul [PW3] asked the accused to treat his daughter properly and thereafter returned home. It is further case of prosecution that 15 days prior to the date of incident, the accused visited the house of Shaikh Makbul [PW3] at Yeravada and made demand of Rs.2000/- for purchasing new bicycles but Shaikh Makbul [PW3] was not in a position to give the amount and promised him to pay the amount later-on. At that time also the deceased asked Shaikh Makbul [PW3] to give away the amount of Rs.2000/-.

4. On 24.3.1993 at about 10.00 p.m. the relations of accused went to Shaikh Makbul [PW3] at Yeravada and informed that the deceased is admitted in the Sasoon Hospital, Pune in burnt conditions. Therefore, he rushed to the hospital and reached there at about 10.30 p.m. and found the deceased admitted in burnt conditions. It is further case of prosecution that when Shaikh Makbul [PW3] - father made enquiry with the deceased, she disclosed to him that when she was sleeping, the accused poured kerosene on her and set her on fire. Thereafter he went to the police chowky and lodged complaint which came to be recorded by the police.

5. The offence was registered and was investigated,

during which, as usual, the statement of witnesses were recorded, panchnama of the scene of offence was drawn, inquest was also drawn. The offence was registered under section 302 and 498A of the Indian Penal Code. After completing the investigation and finding sufficient evidence against the accused to have committed an offence, the charge-sheet came to be filed in the Court of Judicial Magistrate, First Class, who in turn committed the case to the Court of Additional Sessions Judge, Baramati.

6. The learned Additional Sessions Judge, Baramati framed charges against the accused under section 302 and 498A of the Indian Penal Code, to which accused pleaded not guilty. His defence was of false implication in this case.

7. The evidence that was led before the Trial Court consisted of Milind Wable [PW1] - the Assistant Professor in the Forensic Medicine, who performed autopsy on the dead body of the deceased; Sharad Madke [PW2] - Judicial Magistrate, First Class, who recorded the Dying Declaration on 25.3.1991 [Exhibit - 16]; Shaikh Makbul [PW3] - father and Shabira Shaikh [PW5] - the mother of the deceased; Kamal Lokhande [PW4] - neighbour of Shaikh Makbul[PW3]; Chandrakant Bhandgar [PW6] - the Special Executive Magistrate, who recorded

one of the Dying Declaration at Exhibit - 24; Dattatraya Boravake [PW7]- Head Constable - who recorded the complaint [at Exhibit -18]; Raosaheb Dormale [PW8] - the S.D.P.O. Baramati, who investigated the offence; Safiya Pansare [PW9] - the neighbour of the accused, who turned hostile to the prosecution ; Vishwas Ajgekar [PW10], the Head Constable - who had recorded the statement of the deceased [at Exhibit - 27], which was one of the Dying Declarations; Dr. Sancheti [PW11] - who had treated the deceased.

8. On the basis of the evidence that was recorded, particularly the three dying declarations, of which two had completely exonerated the accused of the offence punishable under section 302 of the Indian Penal Code, the Learned Trial Judge acquitted the accused of the offence under section 302 of the Indian Penal Code. He, however, placed reliance on the evidence of Makbul Shaikh [PW3] and Shabira Shaikh [PW5] - the parents of the deceased for holding the accused guilty of the offence under section 498A of the Indian Penal Code and thus, passed aforesaid order of conviction and sentence which is assailed in this appeal.

9. The learned Counsel for the appellant submitted that the evidence with regard to the offence under

section 498A of the Indian Penal Code is only of the parents of the deceased, who had falsely implicated the accused. He further submitted that the first two Dying Declarations completely exonerated the accused. In these two dying declarations, the deceased had stated that she accidently caught fire from the buring stove and specifically stated that she had no complaint against any one. He submits that the third dying declaration [Exhibit - 16], however, was recorded only after the parents happened to meet the deceased in the hospital and, therefore, it shows that the parents of the deceased had tutored the deceased to make the statement implicating the appellant / accused. As such, the evidence given by these two witnesses can not be believed. He further submits that there is no independent witness to state that the accused had ill-treated the deceased by beating, keeping her starving and not allowing her to go out of the house.

10. As against this, learned Additional Public Prosecutor tried to support the judgment of the Trial Court.

11. It is pertinent to note that the first two dying declarations [at Exhibit - 24 and Exhibit - 27] were recorded on 24.3.1991 itself. The incident had occurred on that day at 5.00 p.m. in the evening. The

statement came to be recorded after the deceased was admitted to the hospital. What is pertinent to be noted is that Makbul Shaikh [PW3] the father of deceased states that he reached the hospital and met the deceased at 10.30 p.m. on that day. The third dying declaration came to be recorded by the Judicial Magistrate, First Class [at Exhibit - 16] only at 1.45 a.m. on 25.3.1991. It is in this statement of the deceased, she had stated that her husband came home in the evening, abused her, beat her, picked up the kerosene Can which was lying in the house, poured the kerosene on her and set her on fire.

12. In this regard, it is to be noted that the Trial Court indirectly held that this last dying declaration was not reliable as it was tutored. It is oblivious that the deceased must have been tutored by her parents only. The intention of the parents Makbul Shaikh [PW3] and Shabira Shaikh [PW5] behind tutoring the deceased was obvious and it was to falsely implicate the accused in a case of an offence under section 302 and 498A of Indian Penal Code.

13. It is in the light of this factual position that the evidence of Makbul Shaikh [PW3], Kamal [PW4], his neighbour and Shabira Shaikh [PW5] - the mother of the deceased shall have to be examined carefully. These

witnesses have stated that the deceased had complained to the parents on her visit to her parents house that the accused was ill-treating her, beating her, she was kept hungry and that deceased was not allowing her to go out of the house. Makbul Shaikh [PW3] also states that the deceased had complained him that the accused was consuming liquor. He further states that on one day, he had visited the house of the accused, at that time also the deceased made similar complaints to him. He further states that about 15 days prior to the date of incident, the accused came to his house and made demand of Rs. 2000/-. Makbul Shaikh [PW3] states that he told accused that he did not have money and promised to pay the amount later -on.

14. The evidence of Shabira Shaikh [PW5] is to the same effect though not so much in detail. Kamal [PW4] has also told similar story.

15. Question is whether the evidence of these witnesses could be relied upon and should be accepted as true, particularly, in the light of the fact that the parents had tutored the deceased to make statement implicating accused in a serious charge of murder. If the parents had gone to the extent of implicating the accused in such a serious charge, they may also implicate the accused in a charge under section 498A of

the Indian Penal Code. Therefore, the evidence of these witnesses shall have to be closely scrutinised and could be relied upon only after the strict scrutiny made on touch stone of probability.

16. What is pertinent to be noted is that although these witnesses have stated that the deceased had complained to them about such type of ill-treatment, none of them has given reason as to why the accused was ill-treating the deceased. The accused specifically denied the charge of ill-treatment. If there is no reason for the accused to ill-treat the deceased, such evidence cannot be relied upon. It is not the case of prosecution that the ill-treatment was on account of not satisfying the demand of Rs.2000/-. This is quite obvious because the demand of Rs.2000/- was allegedly made only fifteen days prior to the incident. It is pertinent to note that when this demand was made, Makbul Shaikh [PW3] had not refused to pay but only said that he did not have the money at that time and promised to pay that amount later-on. Admittedly, the accused was running a Cycle Shop. It is possible that the accused might have made a demand of Rs.2000/- for the purpose of purchasing new bicycles, which he was giving on hire. However, there is no case of the prosecution that on account of non- satisfaction of this demand by the father of the deceased, the deceased

was being ill-treated. If this was so, we are at a loss to understand as to what was the reason for which the accused was ill-treating the deceased. What is pertinent to be noted is that the parents of the deceased were on visiting terms with the accused and further, if at all the accused was ill-treating the deceased, the parents of the deceased could have complained either to the elder brother Ahmed or mother of the accused. But no such complaint was ever made as stated by the Makbul Shaikh [PW3]. However, by way of an improvement, Shabira Shaikh [PW5] has stated that when she along with Makbul Shaikh [PW3] had visited the house of the accused, they had complained to the elder brother of the accused about the ill-treatment. However, that version of Shabira Shaikh [PW5] is not supported by Makbul Shaikh [PW3].

17. All these circumstances clearly indicate that there was an attempt on the part of the parents of the deceased to falsely implicate the accused when they found that the deceased had met an accidental death by fire.

18. The learned Trial Judge has also made a reference to the legal position that the dying declaration could be partly relied upon. However, in the present case, the last dying declaration [at Exhibit - 16] does not

speak anything about the events that may be covered by provisions of Section 498A of the Indian Penal Code. It only speaks about one time beating and abusing without disclosing any reason therefor, and pouring kerosene, setting the deceased on fire. Therefore, even if this dying declaration is taken into consideration, the same does not create a case of offence under section 498A of the Indian Penal Code. In fact, however, the third dying declaration [at Exhibit - 16] shall have to be discarded totally being a tutored one.

19. Under these circumstances, in fact, there was no case of accused having committed offence under section 498A of the Indian Penal Code also. The order of conviction and sentence passed by the learned Additional Sessions Judge is erroneous and same needs to be set aside. Hence order :-

ORDER

1. Appeal is allowed.

2. Order of conviction of the appellant - accused - Shaukat Abdul Pansare of offence punishable under section 498[A] of the Indian Penal Code and the sentence to suffer R.I. for two years and to pay fine of Rs.50/- in default to suffer R.I. for one month is hereby set aside.

3. Accused appellant is also acquitted of the offence punishable under section 498[A] of the Indian Penal Code.

4. His bail bond stands cancelled.

5. Fine, if paid, shall be refunded to the accused.

[S.K. SHAH, J.]